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DOCUMENT
ELECTRONICALLY FILED
DOC #:

DATE FILED JUN 06 2017

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May 31, 2017

Via ECF and By Hand

Hon. George B. Daniels
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SO ORDERED:

George B. Daniels, U.S.D.J.

Dated: JUN 01 2017

Dear Judge Daniels:

I am writing on behalf of Defendant Columbia University ("Columbia") in the above-captioned matter to request that the Court grant permission to file under seal or with redactions the memorandum of law and certain exhibits in support of Columbia's motion to dismiss the complaint, which is scheduled to be filed on Monday, June 5, 2017. The parties have conferred regarding this issue, and Plaintiff does not object to Columbia filing these documents under seal or with redactions.

The information in the documents proposed to be filed under seal or redacted contains confidential and personal details concerning the Plaintiff, an undergraduate student at Columbia who was the victim of two alleged sexual assaults, including highly sensitive information concerning those alleged incidents of sexual assault.

Although there is a presumptive right to access judicial documents, that right is not absolute. *See, e.g., Nixon v. Warner Commc 'ns, Inc.*, 435 U.S. 589, 599 (1978) (explaining that "the decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case"). Instead, the Court must "balance competing

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considerations against" public access, including the privacy rights of those involved. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). This Court has frequently balanced those competing considerations and agreed to permit parties to file sensitive and confidential information under seal or in redacted form. *See, e.g.*, Order granting First Letter Motion to Seal Document, *Sotheby's Inc. v. de Saint Donat-Pourrieres*, No. 17-CV-00326 (S.D.N.Y. Mar. 27, 2017), ECF No. 19; Order that Plaintiffs' Motion for Leave to File their Addresses under seal is Granted, *Desimone v. Kingdom of Saudi Arabia*, No. 17-CV-00348 (S.D.N.Y. Oct. 4, 2016), ECF No. 5; Order granting Motion to Seal Document, *AOL Inc. v. Digital Delivery Networks, Inc.*, No. 15-CV-06620 (S.D.N.Y. Nov. 2, 2015), ECF No. 18.

In cases such as this, where the underlying facts involve incidents of sexual assault and/or records containing highly sensitive personal information, courts have recognized an inherent right to privacy and permitted documents that implicate that right to be filed under seal or with redactions. *See, e.g.*, *Madison v. Hulihan*, No. 09-CV-337, 2012 WL 1004780, at *1 n.3 (E.D.N.Y. Mar. 23, 2012) (noting that medical records were filed under seal); *Wheeler-Whichard v. Doe*, No 10-CV-0358S, 2010 WL 3395288, at *7 (W.D.N.Y. Aug. 25, 2010) ("this Court and other district courts routinely file medical records under seal, without sealing the action or having plaintiff proceed under a pseudonym, to protect plaintiff's privacy interests in his medical records"); *Bloch v. Pike*, No. 09-CV-5503, 2010 WL 2606355, at *6 n.8 (E.D.N.Y. May 20, 2010) ("Because plaintiff's submission contains confidential medical records, they are being filed under seal."); *Herrera v. Santa Fe Pub. Sch.*, No. 11-CV-0422, 2014 WL 4347176, at *13 (D.N.M. Sept. 2, 2014) (ordering the parties to file "an unreacted version under seal" of "any briefing that relates to the Plaintiffs' school records, their medical records, or any sexual assaults" and "a second, redacted version publicly"); *Bailey v. Wexford Med. Serv.*, No. CCB-13-2974, 2014 WL 4541266, at *6 (D. Md. Sept. 10, 2014) (granting motion to file medical records under seal where plaintiff had "placed his medical information at issue").

Here, too, the Court should exercise its discretion and permit Columbia to file this highly sensitive information under seal or with redactions.¹

Respectfully submitted,



Roberta A. Kaplan

cc: Counsel of Record

¹ If the Court requests, Columbia is prepared to provide the Court with a hard copy of the relevant documents in highlighted form (with the portions to be redacted highlighted).